RECENT IMPORTANT DECISIONS.

ADVERSE POSSESSION—HOSTILE CHARACTER—POSSESSION UNDER EXECUTORY CONTRACT FOR SALE.—In 1895 plaintiff orally contracted to sell the land in question to defendant's wife, agreeing to deliver a deed upon final payment of the purchase price. Defendant and wife thereupon entered upon the premises, built their home thereon and made other improvements. Defendant's wife died in 1899, after which date defendant arranged with plaintiff to work the lands on shares. This arrangement was continued for several years. In 1909 plaintiff rented the land to one Young, against the protest of defendant, who ousted Young in 1911. Defendant paid for the land in full after the death of his wife, the date of payment not appearing from the facts of the case, but never received a deed. In 1911 plaintiff sued defendant to recover possession of said land. Defendant contended that he had acquired title thereto by adverse possession for the statutory period of fifteen years. *Held,* that where a vendee under an executory contract for the sale of land looks to his vendor for title his possession is not adverse to that of the vendor, and as the possession of defendant was amicable from the beginning and there was no act done by defendant to apprise plaintiff that he, the defendant, held the land adversely, his claim of adverse possession must fail. *Padgett* v. *Decker* (Ky. 1911) 140 S. W. 152.

Where one enters into possession of land under an executory contract of purchase, such possession is in subordination of the title of the vendor until payment or performance of all conditions by vendee, *In re Department of Public Parks,* 73 N. Y. 560, 566; *Heermans* v. *Schmaltz,* 7 Fed. 566, 577; or until the vendee has distinctly and irrevocably repudiated the title of his vendor. *Burke* v. *Douglass,* 115 Mich. 197, 73 N. W. 133; *Furlong* v. *Garrett,* 44 Wis. 111; *Adams* v. *Fullam,* 43 Vt. 592, and cases cited in 1 Cyc. 1046; *Sprigg* v. *Albin,* 6 J. J. Marsh. (Ky.) 158, 163; *Moore* v. *Farrow,* 3 A. K. Marsh. (Ky.) 48; *Riley* v. *Million,* 4 J. J. Marsh. 396. *Accord*: *Commonwealth* v. *Gibson,* 85 Ky. 666, 4 S. W. 453, 9 Ky. Law Rep. 205, (where a party entered and occupied for the statutory period with expectation that the owner would convey *in futuro*); *Creech* v. *Abner,* 106 Ky. 239, 50 S. W. 58, 20 Ky. Law Rep. 1812. The court having found no change in the amicable possession of defendant until the ouster of Young the decision in the principal case is in accord with the undoubted weight of authority, and with the former decisions in Kentucky. Had defendant held possession for the statutory period *after* payment of the purchase price, he would undoubtedly have acquired title by adverse possession under the cases cited above, notwithstanding a deed had not been delivered to him.

BILLS AND NOTES—BONA FIDE PURCHASER—EFFECT OF TAKING AFTER MATURITY.—Plaintiff purchased nine promissory notes amounting to $1,200, payable at different times, and given by defendant for the price of a printing press purchased from the payee. The press did not comply with the terms of a

warranty made by payee and was worth only $500. The notes were secured by a chattel mortgage to the payee, which was assigned to plaintiff and which provided that if default should be made in payment of the notes or any part thereof, when due, the whole amount secured by the mortgage should become due and payable. Two of the notes were overdue when the whole series was acquired by the plaintiff. Each note contained this clause: "This note is secured by chattel mortgage to American Type Founder's Company of even date herewith on personal property in Sioux Falls, State of So. Dak." Plaintiff sued to foreclose the mortgage, and defendant sought to counterclaim for the breach of the warranty. *Held,* that plaintiff acquired none of the notes before maturity, but was charged with notice as to defenses against all the notes though on their face some of them were not yet due. *Rowe* v. *Scott* (S. D. 1911) 132 N. W. 695.

"An indorsee in due course is one who in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer." REV. CIV. CODE, § 2199. The authorities agree that one taking a note after maturity and dishonor is chargeable with knowledge of equities existing in favor of the maker. *James* v. *Yaeger,* 86 Cal. 184, 24 Pac. 1005; *Williams* v. *Nicholson,* 25 Ga. 560; *Jenkins* v. *Bauer,* 8 Bradw. 634; *Burroughs* v. *Nettles,* 7 La. 113; *Comstock* v. *Draper,* 1 Mich. 481; *Chappell* v. *Allen,* 38 Mo. 213; *Tillou* v. *Britton,* 9 N. J. L. 152; *Fowler* v. *Brantly,* 14 Pet. 318, 10 L. ed. 473. When one takes several notes constituting one transaction, but due at different times, the question whether the fact that one is due and unpaid is notice to the purchaser of all to put him on his guard as to each, is one as to which the decisions of the courts in this country are not in harmony. The following cases hold the affirmative. *Harrell* v. *Broxton,* 78 Ga. 129, 3 S. E. 5; *Hull* v. *Swarthout,* 29 Mich. 249; *Harrington* v. *Claflin,* 91 Tex. 294, 42 S. W. 1055; *Lockwood* v. *Noble,* 113 Mich. 418, 71 N. W. 856. A contrary view is expressed in *Boss* v. *Hewitt,* 15 Wis. 260, in which the court held that an indorsee of several notes of the same maker, secured by one mortgage, bearing the same date, and payable to the order of the same person at different periods, is not chargeable with notice of any equitable defense of the maker against such of the notes as were not due at the time of the indorsement, by reason of the fact that one of the notes was then overdue.

BILLS AND NOTES—BONA FIDE PURCHASER—PAYMENT OF FORGED CHECK—RECOVERY OF PAYMENT.—P bank paid a check, bearing the forged signature of its depositor, to D bank, a holder in due course. D did not in any way contribute to the fraud, and was not guilty of negligence. *Held,* that P cannot, on discovering the forgery afterwards, recover the money paid. *First Nat'l. Bank of Cottage Grove* v. *Bank of Cottage Grove* (Ore. 1911) 117 Pac. 293.

The question decided in the case under discussion is one about which authorities are in conflict. The doctrine that a drawee cannot recover payment to a holder in due course of a forged instrument was first announced by Lord